

By: Larson

H.B. No. 722

Substitute the following for H.B. No. 722:

By: Lang

C.S.H.B. No. 722

A BILL TO BE ENTITLED

AN ACT

relating to the development of brackish groundwater.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1015 to read as follows:

Sec. 36.1015. RULES FOR PERMITS IN BRACKISH GROUNDWATER PRODUCTION ZONES. (a) In this section:

(1) "Designated brackish groundwater production zone" means an aquifer, subdivision of an aquifer, or geologic stratum designated under Section 16.060(b)(5).

(2) "Development board" means the Texas Water Development Board.

(3) "Gulf Coast Aquifer" means the system of hydrogeologic units that run along the Gulf Coast from the Sabine River to the Rio Grande, including:

(A) the Catahoula confining system, including the Frio Formation, the Anahuac Formation, and the Catahoula Tuff or Sandstone;

(B) the Jasper Aquifer, including the Oakville Sandstone and Fleming Formation;

(C) the Burkeville confining system separating the Jasper Aquifer from the Evangeline Aquifer;

(D) the Evangeline Aquifer, including the Goliad Sand; and

1 (E) the Chicot Aquifer, including the Willis
2 Sand, the Bentley Formation, the Montgomery Formation, the Beaumont
3 Clay, and alluvial deposits at the surface.

4 (b) A district located over any part of a designated
5 brackish groundwater production zone may adopt rules to govern the
6 issuance of permits under this section for the completion and
7 operation of a well for the withdrawal of brackish groundwater from
8 a designated brackish groundwater production zone and shall adopt
9 rules described by this subsection if the district receives a
10 petition from a person with a legally defined interest in
11 groundwater in the district. The district must adopt the rules not
12 later than the 180th day after the date the district receives the
13 petition. Rules adopted under this subsection apply only to a
14 permit for a project described by Subsection (c).

15 (c) A person may obtain a permit under rules adopted under
16 this section for projects including:

17 (1) a municipal project designed to treat brackish
18 groundwater to drinking water standards for the purpose of
19 providing a public source of drinking water; and

20 (2) an electric generation project to treat brackish
21 groundwater to water quality standards sufficient for the project
22 needs.

23 (d) The rules adopted must:

24 (1) provide for processing an application for a
25 brackish groundwater production zone operating permit in the same
26 manner as an application for an operating permit for a fresh
27 groundwater well, except as provided by this section;

1 (2) allow withdrawals and rates of withdrawal of
2 brackish groundwater from a designated brackish groundwater
3 production zone not to exceed and consistent with the withdrawal
4 amounts identified in Section 16.060(e);

5 (3) provide for a minimum term of 30 years for a permit
6 issued for a well that produces brackish groundwater from a
7 designated brackish groundwater production zone;

8 (4) require implementation of a monitoring system
9 recommended by the development board to monitor water levels and
10 water quality in the same or an adjacent aquifer, subdivision of an
11 aquifer, or geologic stratum in which the designated brackish
12 groundwater production zone is located;

13 (5) for a project located in a designated brackish
14 groundwater production zone in the Gulf Coast Aquifer, require
15 reasonable monitoring by the district of land elevations to
16 determine if production from the project is causing or is likely to
17 cause subsidence during the permit term;

18 (6) require from the holder of a permit issued under
19 rules adopted under this section annual reports that must include:

20 (A) the amount of brackish groundwater
21 withdrawn;

22 (B) the average monthly water quality of the
23 brackish groundwater withdrawn and in the monitoring wells; and

24 (C) aquifer levels in both the designated
25 brackish groundwater production zone and in any aquifer,
26 subdivision of an aquifer, or geologic stratum for which the permit
27 requires monitoring;

1 (7) provide greater access to brackish groundwater by
2 simplifying procedure, avoiding delay in permitting, saving
3 expense for the permit seeker, and providing flexibility to permit
4 applicants and the district;

5 (8) be consistent with and not impair property rights
6 described by Sections 36.002(a) and (b); and

7 (9) specify all additional information that must be
8 included in an application.

9 (e) Additional information required under Subsection (d)(9)
10 must be reasonably related to an issue the district is authorized to
11 consider.

12 (f) An application for a brackish groundwater production
13 zone operating permit must include:

14 (1) the proposed well field design compared to the
15 designated brackish groundwater production zone;

16 (2) the requested maximum groundwater withdrawal rate
17 for the proposed project;

18 (3) the number and location of monitoring wells needed
19 to determine the effects of the proposed project on water levels and
20 water quality in the same or an adjacent aquifer, subdivision of an
21 aquifer, or geologic stratum in which the designated brackish
22 groundwater production zone is located; and

23 (4) a report that includes:

24 (A) a simulation of the projected effects of the
25 proposed production on water levels and water quality in the same or
26 an adjacent aquifer, subdivision of an aquifer, or geologic stratum
27 in which the designated brackish groundwater production zone is

1 located;

2 (B) a description of the model used for the
3 simulation described by Paragraph (A); and

4 (C) sufficient information for a technical
5 reviewer to understand the parameters and assumptions used in the
6 model described by Paragraph (B).

7 (g) The district shall submit the application to the
8 development board and the development board shall conduct a
9 technical review of the application. The development board shall
10 submit a report of the review of the application that includes:

11 (1) findings regarding the compatibility of the
12 proposed well field design with the designated brackish groundwater
13 production zone; and

14 (2) recommendations for the monitoring system
15 described by Subsection (d)(4).

16 (h) The district may not schedule a hearing on the
17 application until the district receives the report from the
18 development board described by Subsection (g).

19 (i) The district shall provide the reports required under
20 Subsection (d)(6) to the development board. Not later than the
21 120th day after the date the development board receives a request
22 from the district, the development board shall investigate and
23 issue a report on whether brackish groundwater production under the
24 project that is the subject of the report from the designated
25 brackish groundwater production zone is projected to cause:

26 (1) significant aquifer level declines in the same or
27 an adjacent aquifer, subdivision of an aquifer, or geologic stratum

1 that were not anticipated by the development board in the
2 designation of the zone;

3 (2) negative effects on quality of water in an
4 aquifer, subdivision of an aquifer, or geologic stratum; or

5 (3) for a project located in a designated brackish
6 groundwater production zone in the Gulf Coast Aquifer, subsidence
7 during the permit term.

8 (j) After receiving from the development board a report
9 issued under Subsection (i) and after notice and hearing subject to
10 Subchapter M, the district may:

11 (1) amend the applicable permit to establish a
12 production limit necessary to mitigate any negative effects
13 identified by the report;

14 (2) approve a mitigation plan that alleviates any
15 negative effects identified by the report; or

16 (3) both amend the permit to establish a production
17 limit and approve a mitigation plan.

18 (k) Rules adopted under this section must provide that the
19 production authorized from a designated brackish groundwater
20 production zone is in addition to the amount of managed available
21 groundwater provided under Section 36.108. To the extent possible,
22 a district shall issue permits up to the point that the total volume
23 of exempt and permitted groundwater production in a designated
24 brackish groundwater production zone equals the amount of brackish
25 groundwater that may be produced annually to achieve the
26 groundwater availability described by the development board in its
27 designation of the brackish groundwater production zone under

1 Section 16.060(e).

2 (1) A district may not adopt rules limiting access to the
3 production of groundwater within a designated brackish groundwater
4 production zone to only those projects described by Subsection (c).

5 (m) The district may grant or deny an application to extend
6 a term under this section only using rules that were in effect at
7 the time the application was submitted.

8 (n) An application for a permit under this section is
9 governed solely by district rules consistent with this section.

10 SECTION 2. This Act takes effect September 1, 2019.